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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re P.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

P.M.,

Defendant and Appellant.

A155377

(Contra Costa County
Super. Ct. No. J1501276)

After a series of juvenile offenses and probation violations, appellant P.M. was committed to the Contra Costa County Youthful Offender Treatment Program (YOTP) with a maximum term of confinement of three years and 120 days or until age 21, whichever is to first occur. P.M. asserts the commitment order unconstitutionally delegated the juvenile court's authority to determine the length of commitment to the probation department. We disagree for the reasons expressed in *In re J.C.* (2019) 33 Cal.App.5th 741 (*J.C.*). We therefore affirm.

BACKGROUND

P.M. admitted violating his terms of probation. The probation department's disposition report recommended that P.M. be committed to the YOTP at the Contra Costa County juvenile hall. The juvenile court adopted the probation department's recommendation at the dispositional hearing and continued P.M. as a ward of the court

with no termination date. It ordered: “Probation will take custody of [P.M.] and place him in a court-approved home or institution. He’ll be committed to a county institution for a period not to exceed the maximum custody time of three years [and] 120 days, or until age 21, whichever comes first. And credit for time served is at 297 days now. [¶] . . . [¶] He’ll participate in the county program YOTP. He must successfully complete all phases of the program, follow all treatment requirements, and obey all rules and regulations. He’ll be detained at Juvenile Hall pending delivery to YOTP, and prior orders . . . will remain in effect.”

As described by the probation department,¹ YOTP is “an innovative response by the Probation Department . . . in collaboration with other criminal justice partners, to develop a comprehensive and secured sentenced program, utilizing best and evidence-based practices, for serious and/or repeat youthful male offenders, age 16-21, that the Division of Juvenile Justice, formerly known as the California Youth Authority would no longer accept.

“YOTP is a self-contained, phased, behavioral treatment unit in Juvenile hall for 30 residents, with enriched staffing that includes a mental health specialist, teacher, and three deputy probation officers in addition to counseling staff, who work together running groups and reviewing the residents’ progress to see if they are ready to move forward to the next phase. The program is cognitively based and requires the young men to work their way through and out of the program. Additional programs include school, anger replacement, victim awareness, life skills, substance abuse counseling, family counseling and enrichment programs. On-line higher education through Diablo Valley Community College is available following the completion of a GED or attainment of a high school diploma. Custodial time is significant; sentencing to the maximum confinement time or

¹ At P.M.’s request, joined by the People, we take judicial notice of a program description captioned “Contra Costa County Probation Department, Youthful Offender Treatment Program (YOTP)” and a YOTP handbook captioned “welcome to the Youthful Offender Treatment Program.”

age 21, whichever comes first. The phased program addresses a common institutional problem of residents not participating and ‘waiting out their time.’

“Once a youth achieves his last phase and the court determines a release date, based upon his performance in the program, the resident, staff and his family, begin to work on his transition plan to the community. The probation officers locate community resources and following release onto electronic monitoring, provide close supervision to assist the youth in the successful transition home or to independent living. Keeping our youth locally is less stressful for the family and resident and allows availability for the necessary counseling work. The significant custodial time associated with this program allows the youth to [learn] new skills and time to consolidate these gains, while protecting the public.”

DISCUSSION

P.M. contends the disposition order delegates to the probation department the authority to determine the length of his commitment, violating constitutional separation of powers and due process. This is so, he maintains, “because probation—and only probation—determines whether a youth advances from one phase [of the program] to another, and whether a youth has successfully completed Phase Three and should ‘be released to Phase Four, GPS Supervision/Community Aftercare’ [citation.] , it is probation—not the juvenile court—that still determines length of commitment.”

Division 5 of this court recently rejected this same argument in *J.C.*, *supra*, 33 Cal.App.5th 741, another case involving a minor committed to juvenile hall for a maximum term with the possibility of early release if and when he successfully completed YOTP. *J.C.* concluded the juvenile court did not delegate the authority to determine the length of the minor’s commitment to the probation officer. (*Id.* at p. 745.) Its reasoning is sound and applies here with equal force.

The *J.C.* court relied on the holding in *In re Robert M.* (2013) 215 Cal.App.4th 1178 (*Robert M.*) that the juvenile court retains supervision and control over a minor committed to juvenile hall and ordered to participate in a custodial treatment program even though the minor “ ‘is answerable on a daily basis to those who operate the

program.’ ” (*J.C.*, *supra*, 33 Cal.App.5th at p. 745, quoting *Robert M.*, *supra*, at p. 1185.) *Robert M.* thus concluded that, where the juvenile court ordered that the minor successfully complete a custodial treatment program, “ ‘[t]he court clearly has the retained jurisdiction to determine whether minor has done so.’ ” (*Ibid.*) By parity of reasoning, *J.C.* held the juvenile court’s order committing the minor to YOTP did not delegate to the probation officer the determination of whether and when the minor successfully completed the program. (*J.C.*, *supra*, 33 Cal.App.5th at p. 745; see also *id.* at pp. 745-746 [rejecting contention, also raised here, that *Robert M.* is inapposite because it addressed an order requiring completion of sex offender counseling, not YOTP].) We agree.

Apparently referring to the YOTP handbook, P.M. asserts the procedure for determining whether he “fails one or more phases of the YOTP commitment, and is not released from the locked facility, sets forth no noticed hearing with a finding by a judicial officer” and, instead, “is solely up to the discretion of the Probation Department.” Not so. As *J.C.* accurately observes, “the handbook supports our analysis rejecting [the minor’s] challenge” and “plainly contemplates the probation officer will provide the juvenile court with an opinion about whether the minor has successfully completed the program and will make a recommendation to the court regarding the minor’s release. The court will then make the final determination on these issues.” (*J.C.*, *supra*, 33 Cal.App.5th at pp. 746-747.) “In fact, the handbook states the court review will be set ‘*prior* to your successful completion of phase three,’ not after successful completion. (*Italics added.*) To the extent the handbook assumes the probation officer will determine whether the minor has successfully completed phases one and two, Minor concedes the juvenile court could ‘overrule a phase decision by probation’ but argues the authority to determine a minor’s successful completion has nonetheless been impermissibly delegated to the probation officer. The logical extension of Minor’s argument is that *any* decision impacting a minor’s progress through YOTP cannot be made by probation in the first instance, even if the court will hold review hearings and retains the authority to overrule the decision. We see no legal basis for such a conclusion. When a minor is committed to

a county facility and ordered to complete a treatment program, juvenile courts can and do delegate the day-to-day supervision of the minor, while retaining the ultimate authority to determine whether the minor has successfully completed the program.” (*Id.* at p. 747.)

P.M.’s due process argument fails for closely related reasons. P.M. argues that by allowing the probation department to determine whether or not he has successfully completed YOTP, the juvenile court circumvents Welfare and Institutions Code section 777 because in doing so the probation department could determine he violated probation without notice, hearing, or judicial determination by a preponderance of the evidence. But the juvenile court retains the authority to determine whether the minor successfully completes YOTP. Furthermore, Welfare and Institutions Code section 777, which requires that “[a]n order changing or modifying a previous order by removing a minor from the physical custody of a parent . . . and directing . . . commitment to a county institution . . . shall be made only after a noticed hearing,” has no bearing in this case because the court ordered P.M. committed to a county institution for a maximum term of confinement unless he completes YOTP sooner. It did not authorize the probation department to change or modify a previous order or to remove the ward from his parent’s physical custody. (See *J.C., supra*, 33 Cal.App.5th at p. 748, fn. 8.)

To the extent P.M. suggests the probation department might unfairly evaluate his performance in YOTP, he (or his parent or attorney) retains the ability to raise that issue before the juvenile court by filing a petition under Welfare and Institutions Code section 778 to change, modify or set aside its order on the grounds of a changed circumstance. For example, he could claim the probation department’s assessment “constitute[s] a changed circumstance from the implicit assumption in the dispositional order that the probation officer will fairly assess Minor’s performance.” (*J.C., supra*, 33 Cal.App.5th at p. 747.)

In sum, the commitment order does not delegate to the probation officer the discretion to determine the length of P.M.’s commitment.

DISPOSITION

The order appealed from is affirmed.

Siggins, P.J.

WE CONCUR:

Fujisaki, J.

Petrou, J.

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